

# HOUSE BILL No. 1234

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-1-6.

**Synopsis:** Contact lens manufacturer affidavit. Requires, with certain exceptions, a contact lens manufacturer to certify by affidavit to the attorney general the manufacturer's brands that are produced, marketed, or sold and made available in Indiana in a commercially reasonable and nondiscriminatory manner. Makes the failure to comply a Class B infraction.

**Effective:** July 1, 2007.

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**Stevenson**

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January 11, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1234

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-1-6 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2007]:

4 **Chapter 6. Contact Lens Consumer Protection**

5 **Sec. 1. As used in this chapter, "alternative channels of**  
6 **distribution" include the following unless the entity is a**  
7 **competitor:**

- 8 (1) **A mail order company.**  
9 (2) **An Internet retailer.**  
10 (3) **A pharmacy.**  
11 (4) **A department store.**  
12 (5) **A drugstore.**  
13 (6) **A mass merchandise store.**  
14 (7) **A buying club.**

15 **Sec. 2. As used in this chapter, "buying club" means a person**  
16 **that, in exchange for valuable consideration, offers to sell or**  
17 **arrange the sale of goods or services to the club's customers at**

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prices that are represented as being lower than prices generally available to the consumer.

Sec. 3. As used in this chapter, "competitor" means an entity that manufactures and sells contact lenses in Indiana in direct competition with another manufacturer.

Sec. 4. As used in this chapter, "manufacturer" means a person that manufactures contact lenses. The term includes any agents of the person.

Sec. 5. As used in this chapter, "prescriber" means an individual who is licensed or authorized to prescribe contact lenses in Indiana.

Sec. 6. (a) This section does not apply to the following types of contact lenses:

- (1) Rigid gas permeable lenses.
- (2) Bitoric gas permeable lenses.
- (3) Bifocal gas permeable lenses.
- (4) Keratoconus lenses.
- (5) Custom soft toric lenses that are manufactured for an individual patient and that are not mass marketed or mass produced.
- (6) Custom designed lenses that are manufactured for an individual patient and that are not mass marketed or mass produced.

(b) A manufacturer that does business in Indiana shall certify by affidavit to the attorney general the manufacturer's brands of contact lenses that are produced, marketed, distributed, or sold by the manufacturer in Indiana and that are made available in a commercially reasonable and nondiscriminatory manner to the following:

- (1) A prescriber.
- (2) An entity associated with a prescriber.
- (3) Alternative channels of distribution.

(c) A manufacturer may only sell, market, or distribute contact lens brands in Indiana that are certified under subsection (b).

(d) If a contact lens brand stops being made available in a commercially reasonable and nondiscriminatory manner in Indiana, the manufacturer shall immediately certify by affidavit to the attorney general that the contact lens brand is no longer being made available.

Sec. 7. This chapter does not require a manufacturer to do the following:

- (1) Sell the manufacturer's product to a competitor.
- (2) Sell contact lenses to different contact lens distributors or

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customers at the same price.

(3) Open or maintain an account with a contact lens seller that is not in substantial compliance with federal or Indiana law regarding the sale of contact lenses.

(4) Determine whether a low volume account with a contact lens seller is a direct account with the manufacturer or an account to be handled through a distributor.

(5) Sell to customers in all geographic areas a contact lens that is being test marketed on a limited basis in restricted geographic areas.

Sec. 8. (a) A manufacturer that knowingly or intentionally violates this chapter commits unfair distribution of contact lenses, a Class B infraction.

(b) The attorney general may:

(1) bring an action;

(2) seek an injunction; or

(3) seek the imposition of a civil penalty;

against a manufacturer that violates this chapter.

SECTION 2. [EFFECTIVE JULY 1, 2007] IC 24-1-6-8, as added by this act, applies only to violations committed after June 30, 2007.

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